

Easterling, Deborah

280260

From: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Sent: Monday, November 19, 2018 6:37 PM
To: Campbell, Chad; PSC_Contact; Jack Smith
Subject: Recent Submission Regarding DIUC
Attachments: 11-19-2018, DIUC Initial Informal Correspondence re Halwig-Noller Complaint (with Exhibits).pdf

Good evening.

As counsel for Daufuskie Island Utility Company, Inc. I write to provide the attached correspondence.

Thank you.



THOMAS P. GRESSETTE, JR.
843.727.2249 direct
Gressette@WGFLAW.com
PO Box 22147 Charleston, SC 29412
66 Hassell Street Charleston, SC 29401

This e-mail and any files transmitted with it are confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this communication in error, please destroy it and notify me immediately by calling 843-727-2200.



G. Trenholm Walker
 Thomas P. Gressette, Jr.
 Ian W. Freeman
 John P. Linton, Jr.
 Charles P. Summerall, IV

THOMAS P. GRESSETTE, JR.
 Direct: 843.727.2249
 Email: Gressette@WGFLAW.com

November 19, 2018

Via Email and US Mail

Mr. Chad Campbell
 Office of Regulatory Staff
 Supervisor, Consumer Services
 1401 Main Street, Suite 900
 Columbia, South Carolina 29201
 Email: ccampbe@regstaff.sc.gov

Via Email and US Mail

Office of the Clerk
 Public Service Commission of South Carolina
 101 Executive Center Drive, Suite 100
 Columbia, SC 29210
 Email: contact@psc.sc.gov

Via Email and US Mail

Newman Jackson Smith
 Nelson Mullins Riley & Scarborough LLP
 151 Meeting Street I Sixth Floor
 Charleston, SC 29401-2239
 Email: jack.smith@nelsonmullins.com

RE: Daufuskie Island Utility Company, Inc. ("DIUC")
 Complaint of Michael and Nancy Halwig and Beverly Noller
 Initial Informal Response
 Docket Number TBD

Dear Mr. Campbell:

My office received a courtesy copy of correspondence related to the above-referenced matter. I am going to be out of the office beginning tomorrow and will not be available until December 2, 2018, so I wanted to provide you with at least an initial indication of DIUC's position. This is meant to be an initial, informal response and DIUC reserves the right to file testimony, exhibits, and additional responsive information should the same be necessary.

November 19, 2018
Page 2 of 3

Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the “Customers”) own property on Daufuskie Island, South Carolina within the service area for Daufuskie Island Utility Company, Inc. (“DIUC”). The Customers were served by DIUC until a hurricane destroyed the roadway and DIUC infrastructure that allowed DIUC to service the Customers’ property. After the on-island Homeowners’ Association rebuilt the roadway, DIUC re-installed infrastructure and resumed water and sewer service to the Customers. After Hurricane Matthew again washed out the roadway and the DIUC infrastructure, the HOA refused to rebuild the roadway. DIUC consulted with ORS and understood that it was not obligated to purchase additional easements to install for a third time infrastructure to serve the Customers.

The Customers nonetheless wished to obtain service. So, the Customers and DIUC entered into a Customer Service Agreement (“CSA”) (copy attached hereto as Exhibit A). Pursuant to the CSA, the Customers would construct infrastructure that upon approval by DIUC could become part of the DIUC system allowing DIUC to resume serving the Customers. Some of the installed items would be on the Customer’s property and would remain under the Customers’ ownership and care. Under existing law DIUC would not be taxed for the new items which would be recorded as contributions in aid of construction. DIUC agreed to waive any administrative costs that it might incur from Guastella Associates, DIUC’s manager.

The CSA contains the following relevant provisions:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed. The purpose of this provision was to prevent DIUC’s other customers from being forced to subsidize a third installation of infrastructure to the Customers’ property.

5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes. This provision specifically explains that the Customers and DIUC are agreeing the Project Mains will become the property of DIUC and they will be booked by DIUC as contributions in aid of construction.

Pursuant to the Tax Cuts and Jobs Act (TCJA), DIUC will be required to pay taxes for the contributions in aid of construction related to the Customers’ contributions to the DIUC system. Under the TJCA, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as contributions in aid of construction. The amount taxed will include costs for the infrastructure as well as associated engineering and labor costs. The TCJA was in effect when the CSA was executed.

After construction was completed and DIUC received all the necessary documentation required by the CSA, counsel provided a document outlining the taxes due. Because counsel for the Customers had recently initiated an informal complaint with ORS, the document was intended to evidence the transaction was complete and that all conflicts between the Customers and DIUC had been amicably resolved. The document was captioned as “Addendum to Customer Service Agreement,” which the Customers appear to have perceived to be some sort of renegotiation of the CSA. That was not the purpose of the document, as explained by correspondence from DIUC counsel (copy attached hereto as Exhibit B).

November 19, 2018
Page 3 of 3

DIUC has obtained necessary documentation to complete the transaction described in the CSA and invoices for the following costs associated with the Project Mains:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	<u>\$ 70.00</u>
	\$ 112,954.07
Tax Rate	<u>33.24%</u>
Tax Due	\$ 37,545.93

DIUC provided the Customers with a statement from its legal counsel indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and DIUC is not authorized to pass that cost on to its other customers.

Based upon the terms of the CSA and all the information available to date, the Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07, that DIUC will incur, plus reimbursement for DIUC legal fees in the amount of \$3,900.

DIUC remains willing to cooperate with the Customers and to assist as it is able. However, DIUC is not at this time authorized to pass on to its ratepayers these costs attributable solely to the reinstallation of the Project Mains for the Customers. To ensure its collection of these costs and to prevent DIUC's other customers from bearing the burden of the same, DIUC requires remittance per the CSA prior to activating service for the Customers.

I hope this letter will be sufficient to explain the circumstances and to resolve this matter. However, if additional information is required please allow DIUC ample time to respond taking into account my return to the office on December 2, 2018.

Sincerely,

/s/

Thomas P. Gressette, Jr.

Enclosures (as stated)

cc: DIUC, Attention Guastella Associates, Inc.

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

054041 | 09000

Daufuskie Island Utility Company, Inc.

725 N. Hwy A1A, Suite B103, Jupiter, FL 33477
888-635-7878

BY
EMAIL

January 30, 2018

Ms. Bev Noller
36 Driftwood Cottage Ln
Daufuskie Island, SC 29915

Dr. Michael Halwig
46 Driftwood Cottage Ln
Daufuskie Island, SC 29915

RECEIVED

FEB 07 2018

NELSON, MULLINS

RE: Customer Service Agreement for Customers located at
36 & 46 Driftwood Cottage Lane

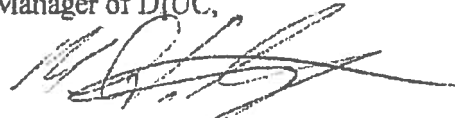
This Customer Agreement is necessary because of severe and continuous storm and tidal ocean erosion that destroyed the section of road located between 22 and 33 Driftwood Cottage Ln, containing Daufuskie Island Utility Company's ("DIUC") water and sewer facilities. Because these facilities could not be replaced as originally designed, DIUC is unable to provide service to customers located at 36 & 46 Driftwood Cottage Ln ("Customers"). As an alternative, DIUC provided Customers with a "Letter of Intent" to serve the customers by connecting to existing mains along Martinangel Ln. and install new mains and facilities ("Project Mains") through the Melrose Golf course to the Customers premises.

DIUC will serve Customers under the following terms of this agreement:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost.
2. The installation of the Project Mains must comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities, and approved by DIUC.
3. Customers will provide DIUC with the following documents: written approval by the owners of the Melrose golf course for the Project Mains installation; easements of sufficient width for the perpetual access to repair, replace and maintain the Project Mains, invoices pertaining to all costs incurred including but not limited to, engineering, permitting and construction.
4. Upon completion of the Project Mains installation, Customers must submit detailed "as built" drawings prepared by a licensed surveyor.
5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.
6. The Customers shall not for any reason be entitled to any refunds with respect to the Project Mains or any future extension or use of those facilities.

Under the circumstances of the need for this agreement there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DJUC,



Mike J. Guastella
Vice President- Operations

G---:p--~
Ms. Bev ~~NO~~ ~~ici~~

Michael Halwig 2/1/18
Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

From: Thomas P. Gressette, Jr.
To: Jack Smith
Subject: RE: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)
Date: Wednesday, October 31, 2018 2:35:00 PM

Jack,

Thanks for your letter. I apologize if I created confusion by the Addendum I recently forwarded. DIUC did not intend to change the Customer Service Agreement ("CSA"); my goal was just to assemble and identify all the various documents in one place for the parties. If there is a better way to handle the paperwork, I am certainly open to that.

DIUC does not want to alter the terms of the CSA. As we have discussed, DIUC cannot charge its other customers for the \$3,900.00 for legal costs and \$37,545.93 for taxes DIUC will incur for the Contributions in Aid of Construction. In order to protect other customers from sharing in the cost responsibility, as set forth in the CSA, the Halwigs and Nollers must bear that cost.

Best,

Tom

From: Margaret Marks <margaret.marks@nelsonmullins.com> **On Behalf Of** Jack Smith
Sent: Wednesday, October 31, 2018 1:52 PM
To: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Subject: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)

Please see the attached letter.

Best,
Jack



NELSON MULLINS

Jack Smith

jack.smith@nelsonmullins.com | 843.534.4309

151 Meeting Street Suite 600 | Charleston SC 29401

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read,

EXHIBIT B

print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.